

ACSI Legal Update on COVID-19 Issues for Schools

George Tryfiates – The CARES Act and Equitable Services

Tom Cathey – Updates on FFCRA Update and the CARES Act

Philip Scott – Religious Liberty and State Issues

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Disclaimer

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Legal and Legislative Coronavirus Resources

ACSI Legal Legislative team is actively looking at issues related to the Coronavirus COVID-19 outbreak that impact Christian education. This page is designed to give you current, relevant information and is updated as new information unfolds.

Submit your question to our Legal Legislative Team

- Thomas J. Cathey, Ed.D., Director for Legal/Legislative Issues
- Phillip Scott, Esq., In-House Counsel to ACSI
- George Tryfiates, Director of Government Affairs

CARES Act Guidance

- **NEW** 4/05/20 - Key Guidance - ACSI - [CARES Act Guidance for Faith Based Schools: Additional SBA Guidance on PPP and EIDL Programs](#)
- **NEW** 4/04/20 - Key Guidance - SBA - [FAQ Regarding Participation of Faith-Based Organizations in the PPP and EIDL Loan Programs](#)
- **NEW** 4/03/20 - CapinCrouse - [Summary of Paycheck Protection Program Loan Regulations](#)
- **NEW** 4/02/20 - ACSI - [SBA PPP and Christian Schools Guidance on Loan Application and Forgiveness](#)
- 3/31/20 - [US Treasury Guidance](#) includes SBA PPP Loan Application
- 3/30/20 - Sherman & Howard - [CARES Act: Key Provisions Regarding SBA Disaster Relief](#)
- 3/30/20 - Sherman & Howard - [CARES Act: Key Differences: PPP and EIDL](#)
- 3/30/20 - Natl. Council of Nonprofits - [Loans Available for Nonprofits in the CARES Act](#)
- 3/27/20 - Key Guidance - Batts Morrison - [CARES Act Approved by Senate Pending House Approval and President Signature](#)
- **UPDATED** 4/5/20 - ACSI - [The Coronavirus Aid, Relief, and Economic Security \(CARES\) Act Update](#)

ACSI Legal Resources

- **NEW** 4/03/20 - [School Data, Student Privacy, and Child Safety During COVID-19](#)
- **NEW** 4/03/20 - [Virtual Classroom School Policy Updates](#)
- 3/31/20 - [ACSI Updated Transcript of Legal Update on COVID-19 Issues for School](#)
- **UPDATED** 4/05/20 - Key Guidance - [ACSI Updated Guidance on COVID-19 Coronavirus Response Act](#)
- 3/27/20 - Early Ed & Child Care Waiver Release for

Third Party Legal Resources

- **NEW** 4/02/20 - Fisher Phillips - [CDC's Updated Return-To-Work Standards May Be Helpful To Businesses](#)
- **NEW** 4/02/20 - Fisher Phillips - [An Employer's Step-By-Step Guide To COVID-19-Related Tax Credits For Paid Leave](#)
- **NEW** 4/02/20 - Fisher Phillips - [Top 10 Things Employers Need To Know About DOL's New COVID-19 Rules](#)
- 3/26/20 - Sherman & Howard - [Where to Hang a](#)

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- Impacts new legislation have on Christian Schools
- Clarify laws that are already in place
- Discuss rapidly evolving issues

Submit your question

Future Webinars

The CARES Act – K-12 Relief

The Coronavirus Aid, Relief, and Economic Security (CARES) Act

March 27, 2020

Creates Education Stabilization Fund with \$30.75 billion in three funds

- ❖ Sec. 18002 – Governor’s Emergency Education Relief Fund (9.8%)
- ❖ Sec. 18003 – Elementary and Secondary School Emergency Relief Fund (43.9%)
- ❖ Sec. 18004 – Higher Education Emergency Relief Fund (46.3%)

The CARES Act – K-12 Relief

- ❖ Two Funds in the Education Stabilization Fund apply to elementary/secondary schools. Both require the local educational agency (LEA) to make equitable services available to non-public schools in the same manner as provided under section [1117 of the Elementary and Secondary Education Act \(ESEA\)](#).
- ❖ The local educational agency (LEA)/school district is required to consult non-public schools.
- ❖ The “control of funds” is maintained by the LEA/school district.

The CARES Act & Equitable Services

Sec. 18002 – Governor’s Emergency Education Relief Fund (9.8%)

Allows the Governor “to provide support to any other institution of higher education, local educational agency, or education-related entity within the State that the Governor deems essential for carrying out emergency educational services to students...the provision of child care and early childhood education, social and emotional support, and the protection of education-related jobs.” (Sec. 18002(c)(3)).

Sec. 18003 – Elementary and Secondary School Emergency Relief Fund (43.9%)

- The allocation of funds to the states is based on the same proportion each state received under Title IA in the most recent fiscal year.
- The law authorizes twelve uses for funds.

The CARES Act & Equitable Services

Twelve uses of Elementary and Secondary School Emergency Relief Fund:

1. Any activity authorized by the ESEA of 1965...
2. Coordination of preparedness and response efforts of LEAs ... with ... public health departments, and other relevant agencies, to improve coordinated responses...
3. **Providing principals and other school leaders with the resources necessary to address the needs of their individual schools.**
4. Activities to address the unique needs of low-income children or students, children with disabilities, English learners, racial and ethnic minorities, students experiencing homelessness, and foster care youth...
5. Developing and implementing procedures and systems to improve the preparedness and response efforts of local educational agencies.
6. **Training and professional development for staff of the local educational agency on sanitation and minimizing the spread of infectious diseases.**
7. **Purchasing supplies to sanitize and clean the facilities of a local educational agency, including buildings operated by such agency.**

Twelve uses of Elementary and Secondary School Emergency Relief Fund:
(cont'd)

8. Planning for and coordinating during long-term closures, including for how to provide meals to eligible students, **how to provide technology for online learning to all students**, how to provide guidance for carrying out requirements under the IDEA and **how to ensure other educational services can continue to be provided consistent with all Federal, State, and local requirements.**
9. **Purchasing educational technology (including hardware, software, and connectivity)** for students who are served by the local educational agency that aids in regular and substantive educational interaction between students and their classroom instructors, including low-income students and students with disabilities, which may include assistive technology or adaptive equipment.
10. Providing mental health services and supports.

Twelve uses of Elementary and Secondary School Emergency Relief Fund:
(cont'd)

11. Planning and implementing activities related to **summer learning and supplemental afterschool programs, including providing classroom instruction or online learning during the summer months** and addressing the needs of low-income students, students with disabilities, English learners, migrant students, students experiencing homelessness, and children in foster care.

12. **Other activities that are necessary to maintain the operation of and continuity of services in local educational agencies and continuing to employ existing staff of the local educational agency.**

The CARES Act & Equitable Services

- Reach out to your LEA (local education agency) now about participating in either Emergency Relief Fund. Equitable services for both will flow through the LEA
- Equitable services requires consultation with non-public schools.
- We've advised the USDE that there may be far more interest in participating in emergency programs than under standard programs. The idea being to alert LEAs to this reality.

The CARES Act & Equitable Services

Things to think about:

- The CARES Act ESF is not a Title I program; that is simply the way funds are allocated.
- Your previous non-participation is not relevant. If you do not know the key personnel in your LEA, your neighboring schools may help.
- Talk to your LEA about what you need *before* the LEA applies for the separate Governor's Emergency Education Relief Fund grant.
- Make sure the LEA counts all of your children in their grant application. All children are eligible to participate in the program, not just Title I children.
- Tell LEA that you want to be consulted with prior to your applying.
- Use the list 12 items to craft what you need from it. Worth noting that what the public and private schools need may differ; the former may not be relevant to the latter.
- The services are determined by the consultation, not by being "consulted" by the LEA. (h/t Jennifer Daniels, USCCB).

The CARES Act & Equitable Services

Things to think about:

- Remember your ombudsman as a possible resource in a difficult situation. It may be that the person will not want to be pulled into ESF questions even though the CARES Act refers to ESEA Section 1117 which includes the ombudsmen.
- However, if you're using the ESF's Elementary and Secondary School Emergency Relief Fund, the first of the 12 uses (#1) is "any activity authorized by the Elementary and Secondary Education Act of 1965". Those are the usual title services and the ombudsman is obligated to assist in those cases. (ESEA is now the Every Student Succeeds Act, ESSA).
- You can assume your LEA would not provide services under #1 if you had already declined to participate. But, if you *did* intend to participate, then #1 applies.
- Worth noting that items #2 through #12 likely include anything you would have sought through ESEA and potentially have fewer requirements.

The CARES Act & Equitable Services

Things to think about:

- If you did participate in ESEA title services, be aware that states may be putting their Title I money *back* into Title IV so they can now use it for distance learning (after originally moving out of Title IV). It's important to ask if there's *now* a Title IV allocation. If you had declined to participate in other titles, but did intend to participate in Title IV – and did not receive it, you would want to pursue it now.
- The Governor's fund is a good place to look for services that aren't in the list of 12. Work with your state coalition to identify the needs; submit that list to your governor.
- Where you have a friendly governor and a school choice program, seek resources for that. In some states, CAPE and nonpublic schools came together to do just that.
- As part of outreach, it's worth reminding governors that they have an obligation to offer equitable services to non-public schools.
- Reach out to your state ACSI coalition if you have one, to your state CAPE or to your state's Catholic Conference if there is one. Work together if you don't already in order to approach governors with a united "ask".

The CARES Act & Equitable Services

What if I have questions?

What if the LEA is not helpful/struggling?

USDE Office of Non-Public Education (ONPE)

<https://www2.ed.gov/about/inits/ed/non-public-education/index.html>

Ombudsman Directory – each state is required to have an ombudsman to help non-public schools with equitable participation.

<https://www2.ed.gov/about/inits/ed/non-public-education/ombudsman-directory.html>

Families First Coronavirus Response Act (FFCRA)

The intent of the bill

- To provide those who are unable to work or telework due to various qualifying reasons to get EPSL and EFMLA

Your school is closed and some employees are not working

- Employees that have been laid off or furloughed and are not being paid on or before April 1 are **not** eligible for FFCRA.
- If school closed on or before April 1 and employees are not working and not being paid, they are **not** eligible for FFCRA.

Families First Coronavirus Response Act (FFCRA)

- Exemption for Businesses under 50 Employees

A small business may claim this exemption if an authorized officer of the business has determined that:

1. The provision of paid sick leave or expanded family and medical leave would result in the small business's expenses and financial obligations exceeding available business revenues and cause the small business to cease operating at a minimal capacity;
2. The absence of the employee or employees requesting paid sick leave or expanded family and medical leave would entail a substantial risk to the financial health or operational capabilities of the small business because of their specialized skills, knowledge of the business, or responsibilities; or
3. There are not sufficient workers who are able, willing, and qualified, and who will be available at the time and place needed, to perform the labor or services provided by the employee or employees requesting paid sick leave or expanded family and medical leave, and these labor or services are needed for the small business to operate at a minimal capacity.

Families First Coronavirus Response Act (FFCRA)

- Exemption for Businesses under 50 Employees

This means a small business is exempt from mandated paid sick leave or expanded family and medical leave requirements only if the:

- employer employs fewer than 50 employees;
- leave is requested because the child's school or place of care is closed, or childcare provider is unavailable, due to COVID-19 related reasons; and
- an authorized officer of the business has determined that at least one of the three conditions described in the question just above is satisfied.

Families First Coronavirus Response Act (FFCRA)

- Exemption for Businesses under 50 Employees
 - New Guidance
 - There is no application or approval.
 - The authorized officer makes the determination on the criteria listed previously.
 - Required documentation
 - Still must post the required Federal notice
 - Remember, the exemption only covers employees staying home to take care of children.
 - You cannot be exempt from the other COVID-19 qualifying reasons.
 - New guidance has more on the tax credits.

<https://www.dol.gov/agencies/whd/pandemic/ffcra-questions>

CARES ACT

Paycheck Protection Program

- New Guidance
 - Interest rate increased from .5% to 1%
 - Payment terms changed to 2 years
 - Loan based on previous year's monthly salaries (2019)
 - The school must use at least 75% of the loan for payroll costs for forgiveness. No more than 25% for non-payroll expenses.
 - Example
 - Loan of \$100,000
 - Over the 8 weeks at least \$75,000 must be used for payroll expenses to be forgiven
 - If you use \$35,000 of the above \$100,000, you would have to pay back anything over 25% - \$10,000

CARES ACT

- Other programs that could benefit the Christian School
 - **Deferral of Payment of Employer's Share of Social Security Taxes** (not available if debt forgiven in PPP)
 - Payment of the employer's share of Social Security tax deposits due on or after March 27, 2020 through December 31, 2020 may be deferred.
 - Employer portion of SS taxes (6.2%)
 - Half due on December 31, 2021
 - Remainder due on December 31, 2022
 - **Employee Retention Credit for Employers Subject to Closure or Substantial Revenue Loss**
 - Provides employers a refundable credit against the employer's share of payroll taxes.
 - Must satisfy one of two tests.
 - » Fully or partially suspended operations due to orders from the government.
 - » Experienced a reduction in gross receipts of at least 50%.

More details for both programs in the CARES Bill Guidance

CARES ACT

- Other programs that could benefit the Christian School
 - **Economic Injury Disaster Loan (EIDL)**
 - A low-interest, fixed rate loan that can provide up to \$2 million in assistance for small businesses that can be used to pay immediate expenses during an emergency.
 - 500 employees or less
 - Eligible applicants who apply for an EIDL may request up to \$10,000 be immediately disbursed. The amount need not be repaid, regardless of the loan decision.
 - If approved the \$10,000 will be provided in 3 days.

The CARES Act – Religious Liberty

The Coronavirus Aid, Relief, and Economic Security (CARES) Act

March 27, 2020

- Concerns: What restrictions and how long they last for PPP and EIDL Loans?
- How long – Forgiveness period, loan period, **facilities for schools**.
 - Do NOT use on facilities – rent or mortgage interest
- What restrictions – federal
 - PPP application's non-discrimination clauses
 - **Title IX** – prohibits sex discrimination, requires equal treatment
 - Obama vs. Trump Administrations
 - Exemption
 - Courts treatment

The CARES Act – Religious Liberty

- What restrictions – federal (continued)
 - PPP application’s non-discrimination clauses
 - **Age Discrimination Act of 1975** — prohibiting discrimination on the basis of age.
 - **Title VI of the Civil Rights Act of 1964** — prohibiting discrimination on the basis of race, color, or national origin.
 - Adds religion, sex, marital status, handicap status in participation of services
 - **Religious exemption** — “Nothing in this part shall apply to a religious corporation, association, educational institution or society with respect to the membership or the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution or society of its religious activities.”

The CARES Act – Religious Liberty

- What restrictions – federal (continued)
 - **Section 504 of the Rehabilitation Act of 1973** – prohibits discrimination on the basis of disability
 - Christian schools already follow non-discrimination in employment.
 - Would require to provide access to students with special needs but not substantially modify its programs beyond what it could accomplish through “minor adjustments”.
 - SBA Guidance on Faith
 - Read our guidance document.
 - Clarifies does not limit ability to set standards, responsibilities and duties of membership, hiring for religious efforts and no waiver of any federal rights to religious protections.
 - May impact admissions and services.

State Educational Issues

State vs. Federal Mandates

- Federal
 - High stakes testing, grades, AYP
 - State test and state curriculum, tied to federal funding
 - Waived for the year if state ask for it.
 - Mostly impacts only public schools.
- State
 - Seat hours & days of instruction
 - Does online education count?
 - School choice – testing mandates.
 - Different than federal – apples and oranges.

State Educational Issues

- Problems
 - mandates do not always live in the state Dept. of Education.
 - Ex – Dept of Revenue.
 - Many state legislatures have closed for the year. Departments of Education have closed or focusing on school districts.
 - Potential lack of awareness of issues.
- Guidance
 - Do not cancel testing until you know what your state will do.
 - Do not cancel other state mandates – ex. attendance – until you know what your state will do.
 - Work to inform your elected officials of the potential problems and offer solutions.

Privacy and Security

- ACSI resources
 - School Data, Student Privacy, and Child Safety During COVID-19
 - Virtual Classroom School Policy Update

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